



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

January 25, 2016

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Paul Tsui, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2512
Albany, New York 12237

David Forsberg, M.D.


John T. Maloney, Esq.
Carter, Conboy, Case, Blackmore, Maloney, Laird, P.C.
20 Corporate Woods Boulevard – 5th Floor
Albany, New York 12211

RE: In the Matter of David Forsberg, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No.16-016) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), (McKinney Supp. 2015) and §230-c subdivisions 1 through 5, (McKinney Supp. 2015), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the Respondent or the Department may seek a review of a committee determination.

All notices of review must be served, by certified mail, upon the Administrative Review Board and the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horen, Esq., Chief Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Riverview Center
150 Broadway – Suite 510
Albany, New York 12204

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's Determination and Order.

Sincerely,



James F. Horen
Chief Administrative Law Judge
Bureau of Adjudication

JFH:cah

Enclosure

STATE OF NEW YORK : DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

COPY

IN THE MATTER
OF
DAVID FORSBERG, M.D.

DETERMINATION
AND
ORDER
BPMC #16-016

A Notice of Referral Proceeding and Statement of Charges dated September 16, 2015, were served upon David Forsberg, M.D. (Respondent). A hearing was held on this matter on November 19, 2015, at Albany, New York. Pursuant to Section 230(10)(c) of the Public Health Law (PHL), Airlic A.C. Cameron, M.D., M.P.H., Chairperson, Dennis P. Zimmerman, M.S., CRC, and Jonathan Ecker, M.D., duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter.

Administrative Law Judge Jankhana Desai served as the Administrative Officer. Paul Tsui, Associate Counsel, appeared for the New York State Department of Health (Department). Respondent appeared at hearing and was represented by John T. Maloney, Esq.

Evidence was received and a transcript of the proceeding was read. After consideration of the entire record, the Hearing Committee issues this Determination and Order.

BACKGROUND

The Department brought this case pursuant to PHL § 230(10)(p), which provides for a hearing when a licensee is charged solely with a violation of New York Education Law (Educ. Law) § 6530(9). In such cases, a licensee is charged with misconduct based upon a criminal conviction or upon a prior administrative adjudication regarding conduct that would amount to professional

misconduct, if committed in New York. The scope of this hearing is limited to whether there is a relevant conviction or administrative determination and if so, to a determination of the nature and severity of the penalty to be imposed. PHL 230(10)(p). Hearing procedures are set forth in Department of Health regulations at 10 NYCRR Part 51.

Respondent is charged with professional misconduct pursuant to Educ. Law § 6530(9)(b), "having been found guilty of...professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state," and § 6530(9)(d), "having his or her license to practice medicine revoked, suspended or having other disciplinary action taken...after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state" where the conduct resulting in the disciplinary action would, if committed in New York state, constitute professional misconduct under the laws of New York state.

FINDINGS OF FACT

The following Findings of Fact were made by the Hearing Committee after a review of the record in this matter. All Hearing Committee findings were unanimous.

1. Respondent was authorized to practice medicine in New York on June 7, 1994, by the issuance of license number 195901 by the New York State Education Department.
2. On or about September 18, 2013, the Tennessee Board of Medical Examiners (Tennessee Board), by a Consent Order, reprimanded Respondent on the basis that Respondent committed unprofessional conduct on January 24, 2013, when he arrived at his work, Vista Radiology, impaired by alcohol. Respondent was ordered to maintain advocacy with the Tennessee Medical Foundation (TMF) pursuant to a five year contract period, to have his provider submit quarterly reports documenting Respondent's compliance with TMF conditions as well as his fitness

to practice medicine, to submit to the Tennessee Board a statement from TMF demonstrating that Respondent is fit to practice, and to pay a civil penalty of \$1,000 plus costs.

3. On January 24, 2013, Respondent arrived at his work location, Vista Radiology, impaired by alcohol, but did not practice medicine. He did not attempt to read any images nor did he attempt to accomplish any medical work. Instead, he called his wife and asked her to pick him up and drive him home.

HEARING COMMITTEE DETERMINATION

The Hearing Committee considered whether the evidence supported a finding that Respondent was practicing his profession while impaired by alcohol on January 24, 2013, in violation of Educ. Law § 6530(7), and concluded that it did not. Although Respondent admitted at hearing to arriving at his workplace impaired by alcohol, he denied working. The Hearing Committee determined that because Respondent did not attempt to perform any medical work at the workplace, he did not practice his profession while impaired in violation of Educ. Law § 6530(7). The mere act of showing up to work impaired was not the same as actually working impaired. However, the Hearing Committee unanimously found that Respondent violated Educ. Law § 6530(8) by being a habitual user of alcohol. At hearing, Respondent admitted that he is indeed an alcoholic and was very candid and forthcoming about his struggle with alcohol over the course of many years.

FIRST SPECIFICATION

Respondent violated Educ. Law § 6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state.

VOTE: Sustained (3-0)

SECOND SPECIFICATION

Respondent violated Educ. Law § 6530(9)(d) by having disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action would, if committed in New York state, constitute professional misconduct under the laws of New York state.

VOTE: Sustained (3-0)

PENALTY DISCUSSION

The Hearing Committee considered the full spectrum of penalties available by statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties, and found censure and reprimand to be an appropriate penalty. The Hearing Committee also found that placing Respondent on probation is necessary, but only if he attempts to reactivate his inactive license in New York. Respondent's license is currently on inactive status in New York, and at this time, Respondent has no intention to reactivate his license in New York. If, however, Respondent attempts to reactivate his license in New York, Respondent should be placed on three years of probation with terms and conditions including enrollment with the Committee for Physician Health.

In determining the appropriate penalty, the Hearing Committee placed great importance on Respondent's acknowledging that he is an alcoholic. The Hearing Committee commends Respondent's voluntarily seeking help and current state of recovery. At the same time, the Hearing Committee notes that Respondent has had a long period of sobriety followed by a relapse, and although Respondent is currently sober, such a relapse could obviously occur in the future. Finally, the Hearing Committee noted that placing Respondent on probation if he were to attempt to reactivate his license in New York would sufficiently protect the public. Therefore, the Hearing Committee

unanimously concluded that the evidence supports the penalty of censure and reprimand, with three years of probation in the event that he reactivates his medical license in New York.


ORDER

IT IS HEREBY ORDERED THAT:

1. The factual allegation that Respondent was practicing his profession while impaired by alcohol, in violation of Educ. Law § 6530(7), is not sustained.
2. The factual allegation that Respondent is a habitual user of alcohol, in violation of Educ. Law § 6530(8), is sustained.
3. Specification 1, that Respondent violated Educ. Law § 6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state, is sustained.
4. Specification 2, that Respondent violated Educ. Law § 6530(9)(d) by having disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action would, if committed in New York state, constitute professional misconduct under the laws of New York state, is sustained.
5. Respondent shall be Censured and Reprimanded.
6. If Respondent, at any time, attempts to reactivate his medical license in New York, he will, as a condition of reactivation, be placed on probation for a period of three years in accordance with terms set forth in Appendix "A" attached to this Determination and Order.

This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10)(h).

DATED: Albany, New York
Jan 21 __, 2016


Airlie A.C. Cameron, M.D., M.P.H.
Chairperson

Dennis P. Zimmerman, M.S., CRC
Jonathan Ecker, M.D.

APPENDIX I

NEW YORK STATE DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER
OF
DAVID FORSBERG, M.D.

NOTICE OF
REFERRAL
PROCEEDING

TO: David Forsberg, M.D.
[REDACTED]

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law §230(10)(p) and N.Y. State Admin. Proc. Act §§301-307 and 401. The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on November 19, 2018, at 10:30 a.m., at the offices of the New York State Department of Health, Riverview Center, 150 Broadway, Suite 610, Menands (Albany), NY 12204-2719.¹

At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the proceeding will be made and the witnesses at the proceeding will be sworn and examined.

You may appear in person at the proceeding and may be represented by counsel who shall be an attorney admitted to practice in New York state. You may produce evidence or sworn testimony on your behalf. Such evidence or sworn testimony shall be strictly limited to evidence and testimony relating to the nature and severity of the penalty to be imposed upon the licensee. Where the charges are based on the conviction of state law crimes in other jurisdictions, evidence may be offered which would show that the conviction would not be a crime in New York State. The Committee also may limit the number of witnesses whose testimony will be received, as well as the length of time any witness will be permitted to testify.

If you intend to present sworn testimony, the number of witnesses and an estimate of the time necessary for their direct examination must be submitted to the New York State

¹ For GPS purposes, enter "Menands", not "Albany".

EXHIBIT

#1

Department of Health, Division of Legal Affairs, Bureau of Adjudication, Riverview Center, 160 Broadway - Suite 810, Albany, NY 12204-2718, ATTENTION: HON. JAMES HORAN, DIRECTOR, BUREAU OF ADJUDICATION (Telephone: (518-402-0748), (hereinafter "Bureau of Adjudication") as well as the Department of Health attorney indicated below, no later than twenty days prior to the scheduled date of the Referral Proceeding, as indicated above.

Pursuant to the provisions of N.Y. Pub. Health Law §230(10)(p), you shall file a written answer to each of the charges and allegations in the Statement of Charges not later than ten days prior to the date of the hearing. Any charge or allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below. You may file a written brief and affidavits with the Committee. Six copies of all papers you submit must be filed with the Bureau of Adjudication at the address indicated above, no later than fourteen days prior to the scheduled date of the Referral Proceeding, and a copy of all papers must be served on the same date on the Department of Health attorney indicated below.

Pursuant to §301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide at no charge a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person. Pursuant to the terms of N.Y. State Admin. Proc. Act §401 and 10 N.Y.C.R.R. §51.8(b), the Petitioner hereby demands disclosure of the evidence that the Respondent intends to introduce at the hearing, including the names of witnesses, a list of and copies of documentary evidence and a description of physical or other evidence which cannot be photocopied.

YOU ARE HEREBY ADVISED THAT THE ATTACHED CHARGES WILL BE MADE PUBLIC FIVE BUSINESS DAYS AFTER THEY ARE SERVED.

Department attorney: Initial here


The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to the Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five days prior to the scheduled date of the proceeding. Adjournment requests are not routinely granted. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation. Failure to obtain an

attorney within a reasonable period of time prior to the proceeding will not be grounds for an adjournment.

The Committee will make a written report of its findings, conclusions as to guilt, and a determination. Such determination may be reviewed by the administrative review board for professional medical conduct.

THESE PROCEEDINGS MAY RESULT IN A
DETERMINATION THAT YOUR LICENSE TO PRACTICE
MEDICINE IN NEW YORK STATE BE REVOKED OR
SUSPENDED, AND/OR THAT YOU BE FINED OR
SUBJECT TO OTHER SANCTIONS SET OUT IN NEW
YORK PUBLIC HEALTH LAW §§230-a. YOU ARE URGED
TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN
THIS MATTER.

DATED: Albany, New York
September 6, 2018.


MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct

Inquiries should be addressed to:

Paul Teul
Associate Counsel
Bureau of Professional Medical Conduct
Canning Tower - Room 2812
Empire State Plaza
Albany, NY 12237
(518) 473-4282

STATE OF NEW YORK : DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER
OF
DAVID FORSBERG, M.D.
CO-13-12-7588A

STATEMENT
OF
CHARGES

DAVID FORSBERG, M.D., Respondent, was authorized to practice medicine in New York State on June 7, 1994, by the issuance of license number 195901 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about September 18, 2013, the Tennessee Board of Medical Examiners, (hereinafter "Tennessee Board"), by a Consent Order (hereinafter, "Tennessee Order"), inter alia, reprimanded the Respondent's license to practice medicine on the basis that Respondent committed unprofessional conduct by arriving at work at Vista Radiology on or about January 24, 2013, impaired by alcohol. Respondent was ordered to maintain advocacy with the Tennessee Medical Foundation (hereinafter, "TMF") pursuant to a five (5) year contract period, to have his provider submit quarterly reports documenting Respondent's compliance with TMF recommendations as well as his fitness to practice medicine, to submit to the Tennessee Board a statement from TMF demonstrating that Respondent is fit to practice, and to pay a civil penalty of \$1,000.00 plus costs.

B. The conduct resulting in the Tennessee Board disciplinary action against Respondent would constitute misconduct under the laws of New York State, pursuant to the following sections of New York state law:

1. New York Education Law §8530(7) (Practicing the profession while impaired by alcohol, drugs, physical disability, or mental disability); and/or
2. New York Education Law §8530(8) (Being a habitual abuser of alcohol, or being dependent on or a habitual user of narcotics, barbiturates, amphetamines, hallucinogens, or other drugs having similar effects).

SPECIFICATIONS
FIRST SPECIFICATION

Respondent violated New York Education Law §8530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state, in that Petitioner charges:


1. The facts in Paragraphs A and B and B1, and/or B and B2.

SECOND SPECIFICATION

Respondent violated New York State Education Law §8530(9)(d) by having disciplinary action taken by a duly authorized professional disciplinary agency of another state against his license to practice medicine, where the conduct resulting in the disciplinary action against the license would, if committed in New York state, constitute professional misconduct under the laws of New York state, in that Petitioner charges:

2. The facts in Paragraphs A and B and B1, and/or B and B2.

DATED: Sept. 16, 2013
Albany, New York

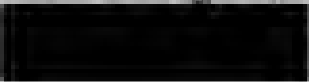

MICHAEL A. HIGER
Deputy Counsel
Bureau of Professional Medical Conduct

APPENDIX A

Terms of Probation

1. Respondent shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his profession.
2. Respondent shall submit written notification to the New York State Department of Health addressed to the Director, Office of Professional Medical Conduct (OPMC), Riverview Center, 150 Broadway, Albany, New York 12204; said notice is to include a full description of any employment and practice, professional and residential addresses and telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty days of each action.
3. Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.
4. Respondent shall enroll in the Committee for Physician Health (CPH). Enrollment in CPH requires Respondent's compliance with the following:
 - a. Completion of any CPH contract terms or requirements; and
 - b. Providing CPH with written authorization for CPH to provide the Director of OPMC with all information or documentation requested to determine Respondent's compliance with the CPH contract and this Determination and Order.
5. The period of probation shall begin upon Respondent's reactivation of his medical license in New York. If Respondent reactivates his license and is therefore placed on probation, the period of probation will be tolled during periods in which Respondent is not engaged in the active practice of medicine in New York State. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. Respondent shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon Respondent's return to practice in New York State.
6. Respondent shall comply with these Terms of Probation, and shall bear all associated compliance costs. Upon receiving evidence of noncompliance with or a violation of these terms, the Director of OPMC and/or the Board for Professional Medical Conduct may initiate a violation of probation proceeding, and/or any other proceeding authorized by law, against the Respondent.

TO: David Forsberg, M.D.



John T. Maloney, Esq.
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20 Corporate Woods Boulevard #5
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